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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/944,293	08/31/2001	Sunmee Choi	17200-780	1899
54205 7590 12/19/2006 CHADBOURNE & PARKE LLP 30 ROCKEFELER PLAZA NEW YORK, NY 10112			EXAMINER DIXON, THOMAS A	
			ART UNIT 3628	PAPER NUMBER

SHORTENED STATUTORY PERIOD OF RESPONSE	MAIL DATE	DELIVERY MODE
3 MONTHS	12/19/2006	PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

If NO period for reply is specified above, the maximum statutory period will apply and will expire 6 MONTHS from the mailing date of this communication.

Office Action Summary

Application No.

09/944,293

Applicant(s)

CHOI, SUNMEE

Examiner

Thomas A. Dixon

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 12/21/04.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-75 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 69-67, 69-75 is/are allowed.
- 6) ☒ Claim(s) 1-16, 20-61, 68 is/are rejected.
- 7) ☒ Claim(s) 17-19 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____

DETAILED ACTION

Claim Rejections - 35 USC § 101

35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

1. Claims 1-16, 20-61, 68 are rejected under 35 U.S.C. 101 because the claimed invention is directed to non-statutory subject matter.

For a claimed invention to be statutory, the claimed invention must produce a useful, tangible and concrete result. An invention which is eligible for patenting under 35 U.S.C 101, is in the "useful arts" when it is a machine, manufacture, process or composition of matter, which produces a useful, concrete and tangible result. The fundamental test for patent eligibility is thus to determine whether the claimed invention produces a useful tangible and concrete result. See *AT&T v. Excel Communications Inc.*, 172 F.3d at 1358, 50 USPQ 2d at 1452 and *State Street Bank & Trust Co. v. Signature Financial Group, Inc.*, 149 F.3d at 1373, 47 USPQ 2d at 1601 (Fed. Cir. 1998). The test for practical application as applied by the examiner involves the determination of the following factors.

- a) "useful" – The Supreme Court in *Diamond v. Diehr* requires that the examiner look at the claimed invention as a whole and compare any asserted utility with the claimed invention to determine whether the asserted utility is accomplished. Applying utility case law the examiner will not that:

- i. utility need not be expressly recited in the claims, rather it may be inferred.
- ii. if the utility is not asserted in the written description, then it must be well established.

b) “tangible” – Applying *In re Warmerdam*, 33 F.3d 1354, 31 UAPQ 2d 1754 (Fed. Cir. 1994), the examiner will determine whether there is simply a mathematical construct claimed, such as a disembodied data structure and method of making it. If so, the claim involves no more than manipulation of an abstract idea and is, therefore, nonstatutory under 35 U.S.C 101. In *Warmerdam*, the abstract idea of a data structure became capable of producing a useful result when it was fixed in a tangible medium, which enabled its functionality to be realized.

c) “concrete” – Another consideration is whether the invention produces a “concrete” result. Usually, this question arises when a result cannot be assured. An appropriate rejection under 35 U.S.C 101 should be accompanied by a lack of enablement rejection, because the invention cannot operate as intended without undue experimentation.

In the present case, the claims 20, 40, 59, 68, directed to a computer readable medium encoded with processing instructions, are seen to be code per-se as they do not appear to be executable and, therefore, are not useful.

In the present case, the claims 1-16, 20-61, directed to methods, mediums and systems are not seen to produce a result that is tangible.

Allowable Subject Matter

2. Claims 17-19 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.
3. Claims 20-31 and 68 would be allowable if rewritten or amended to overcome the rejection(s) under 35 U.S.C. 101, as set forth in this Office action.
4. Claims 62-67, 69-75 are allowable.
5. The following is a statement of reasons for the indication of allowable subject matter:

As per Claims 17-19, 21-22.

The prior art of record, specifically Walker et al (6,134,534), Blume et al (6,839,682), and Brett (WO/01/59649) does not disclose or fairly teach:
storing a plurality of rejected purchase offers from the plurality of purchase offers;
and
determining a number of the unaccepted purchase offers which would be accepted based on a change of the acceptance parameter.

As per Claims 23-39, 41-42.

The prior art of record, specifically Walker et al (6,134,534), Blume et al (6,839,682), and Brett (WO/01/59649) does not disclose or fairly teach:
receiving an indication of a plurality of unacceptable purchase offers submitted for at least one of the available bookings; and
receiving a second indication of a number of unacceptable purchase offers which would be accepted based on a simulated change of the acceptance parameter.

As per Claims 43-58, 60-61.

The prior art of record, specifically Walker et al (6,134,534), Blume et al (6,839,682), and Brett (WO/01/59649) does not disclose or fairly teach:
storing demand data associated with the rejected purchase offers;
entering a simulated change of the acceptance parameter;
determining a simulated acceptance rate based on the stored demand data and the simulated change.

As per Claims 62-67, 69-70.

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The prior art of record, specifically Walker et al (6,134,534), Blume et al (6,839,682), and Brett (WO/01/59649) does not disclose or fairly teach:
collecting demand data for a predetermined period of time, the demand data including at least one purchase offer corresponding to the booking which is not accepted by a seller based on the acceptance parameter; and
generating a report for the seller, the report including at least one new acceptance parameter and an estimated number of bookings corresponding to the new acceptance parameter based on the demand data.

As per Claims 71-74.

The prior art of record, specifically Walker et al (6,134,534), Blume et al (6,839,682), and Brett (WO/01/59649) does not disclose or fairly teach:
receiving a report including an estimated change in an acceptance of a plurality of purchase offers based on the collected demand data and a proposed acceptance parameter; and
changing the acceptance parameter after receiving the report.

As per Claim 75.

The prior art of record, specifically Walker et al (6,134,534), Blume et al (6,839,682), and Brett (WO/01/59649) does not disclose or fairly teach:
a report comprising a number of estimated acceptances which relate to the booking based on at least one proposed acceptance parameter and demand data collected from a buyer-driven commerce system.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Thomas A. Dixon whose telephone number is (571) 272-6803. The examiner can normally be reached on Monday - Thursday 6:30 - 4:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, John Hayes can be reached on (571) 272-6708. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.



Thomas A. Dixon
Primary Examiner
Art Unit 3628

December 06